

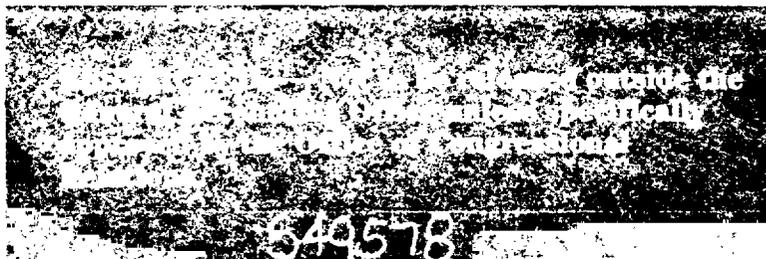
GAO

Report to the Chairman, Committee on
Energy and Commerce, House of
Representatives

September 1990

MOTOR VEHICLE SAFETY

Information on Recent Controversy Between NHTSA and Consumer Group



**Resources, Community, and
Economic Development Division**

B-239745

September 27, 1990

The Honorable John Dingell
Chairman, Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As requested in your letter of November 7, 1989, and subsequent discussions with your office, this report provides information on various allegations involving the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and the Center for Auto Safety (Center). NHTSA is responsible for ensuring highway and vehicle safety; the Center is a private consumer group concerned with vehicle safety issues. You enclosed a copy of the Center's September 1989 Lemon Times newsletter that alleged that NHTSA had allowed unsafe vehicles to remain on the roads. The article listed 25 defect investigations involving roughly 37 million vehicles that NHTSA's Office of Defect Investigation (ODI) had asked manufacturers to recall voluntarily. Later, NHTSA closed these investigations without ordering a recall. Also, the Center stated that the Congress should provide judicial review of NHTSA decisions to deny petitions to open safety investigations, or to close safety defect investigations without a recall. Largely in response to this article, 50 ODI employees sent a letter to the Center defending NHTSA's decisions to close the 25 defect investigations and charged the Center with eroding public confidence in NHTSA.

We focused our review on (1) the reasons for the controversy between NHTSA and the Center over the 25 closed safety defect investigations, (2) the issues surrounding proposed judicial review of NHTSA's decisions to deny petitions to open safety defect investigations or close investigations without a recall (nonenforcement decisions), (3) whether the Center's activities hindered ODI's work performance or damaged public confidence in NHTSA, and (4) whether the Center's sale of data obtained from NHTSA is legal, and whether the Center receives preferential treatment in obtaining those data.

Results in Brief

ODI employees said that they responded to the September Lemon Times article because the director of the Center had visited ODI before the article was published, and the employees believed that a number of their

differences had been resolved. ODI employees saw the subsequent publication of the article as a betrayal because it did not portray ODI's investigative process accurately. A particular misunderstanding concerns the role of the recall request letter, which is the letter ODI sends to manufacturers asking them to recall a vehicle model voluntarily.

Another major source of conflict between ODI and the Center concerns the role of the recall request letter. In its Lemon Times article, the Center noted that ODI sent a recall request letter for each of the 25 investigations and later closed these investigations without ordering a manufacturer recall. According to ODI officials, however, the recall request letter is often followed by ODI's obtaining additional information from the manufacturer or conducting its own tests. ODI then uses this additional information to decide whether the safety defect warrants further investigation or action. NHTSA closed 21 of the 25 safety defect investigations cited in the article because the agency decided that the safety risks were insufficient to warrant pursuing the matter any further. NHTSA closed one investigation because it lost a federal court appeal, and the other three because they were similar to the case NHTSA lost (see app. I).

A 1985 Supreme Court ruling (Heckler v. Chaney) set a general presumption of unreviewability for federal agency nonenforcement decisions. NHTSA's denying a petition to open a particular safety defect investigation fits within this category. A 1988 District of Columbia Circuit Court case (Center for Auto Safety v. Dole) applied the Heckler v. Chaney ruling to a NHTSA decision to deny a petition to open a defect investigation, finding it inherently unreviewable because NHTSA's governing statute and regulations provide a reviewing court "no law to apply." The Center supports legislation under which the court could examine the substance of such denials to determine if they were "arbitrary and capricious." Currently, enacting legislation to change NHTSA's governing statutes is the only way to permit review of NHTSA's nonenforcement decisions under the "arbitrary and capricious" standard. We found no court decisions discussing the right to judicial review of decisions to close investigations without a recall.

We found no evidence that the September controversy hindered ODI employees from performing their work. ODI officials believe, however, that the Center's activities over the past several years have caused a loss of public confidence in NHTSA, resulting in fewer calls to NHTSA's Auto Safety Hotline on potential safety defects, and fewer returns of ODI's vehicle owner questionnaires. Our examination of 6 years of ODI statistics found that questionnaire returns have declined from a high in

1987, and that Hotline defect calls have been declining since early 1989. There is no clear evidence, however, to indicate what role, if any, the Center's activities may have played in this decline.

The Center does not violate any laws by selling information it receives from NHTSA and does not seem to be treated differently from other public interest groups requesting information from NHTSA. According to its director, the Center does not charge the general public for its information packets on specific safety defects and recalls, but does charge reporters, attorneys, and others for a complete list of defect complaints. The price roughly covers the Center's costs.

Background

Under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, NHTSA has the authority to recall motor vehicles found to have a safety defect that poses an unreasonable risk of accident. From 1967 through 1989, approximately 140 million vehicles have been recalled for safety defects, many as a direct result of NHTSA's influence.

The Center for Auto Safety is a nonprofit consumer group founded by Ralph Nader and the Consumers Union in 1970.¹ The group has been independent of its founders since 1972. The Center has been both a major critic of NHTSA and a frequent user of NHTSA information and data. The Center also supplies information to NHTSA from consumer complaints it receives on possible vehicle defects.

In an article in its September 1989 Lemon Times, the Center accused NHTSA of allowing vehicles it knows to be unsafe to remain on the roads. The article lists 25 investigations involving roughly 37 million vehicles in which NHTSA asked for a voluntary manufacturer recall and later closed the investigation without a recall. The Center contends that the Congress should provide for judicial review of agency decisions to close safety defect investigations (such as the 25) without a recall or to deny petitions to open defect investigations. Fifty NHTSA ODI employees signed a response letter to the Director of the Center defending NHTSA's record on the 25 cases and charging the Center with undermining the defect investigation program by eroding public confidence in NHTSA.

¹The Consumers Union is a nonprofit organization established in 1936 which provides information to consumers on goods, services, health, and personal finance.

Several Reasons for the NHTSA/Center Controversy

ODI officials and employees told us that although they expect criticism from outside groups in the course of their work, the Lemon Times article provoked a response because the Director of the Center had visited ODI prior to its publication. ODI employees thought they had reached a consensus on several issues of disagreement during this visit, but the critical article came out shortly afterwards. NHTSA and the Center continue to differ on their interpretations of the recall request letter and its role regarding the 25 defect investigations cited by the Center. Beyond this, the different roles and responsibilities of NHTSA and the Center in promoting auto safety cause a continuing tension between the two groups.

Center Director's Visit Provided Impetus for NHTSA Response Letter

The main catalyst for writing a letter responding to the Lemon Times article was the fact that the Director of the Center had visited ODI shortly before its publication to resolve differences between the two groups. ODI officials invited the Director to visit the agency and talk to ODI staff about how the two groups could work together more effectively, hoping to arrive at a compromise in regard to information sharing. Specifically, ODI employees have been trying to get the Center to standardize the information contained in consumer complaints that it forwards to ODI, thereby saving what staff characterize as many extra hours of work tracking down additional information and weeding out duplicate complaints.

ODI employees told us that after the meeting, they were left with the impression that the Center would be more willing in the future to work with the agency for their mutual goal of promoting vehicle safety. Hence, the subsequent publication of the Lemon Times article caused many employees to feel betrayed because they believed the Director deliberately misrepresented ODI's investigative process.

Recall Request Letter's Role in NHTSA's Investigative Process Is Disputed

As outlined in ODI's formal procedures, a request letter for voluntary recall is sent when ODI investigators have made a preliminary determination that a defect exists. This determination is made during the engineering analysis phase of an investigation. A recall request letter is only one step in an ongoing safety investigation, and subsequent information from the manufacturer or from ODI's own testing may lead investigators to conclude that the defect does not pose an unreasonable risk of accident. Also, a manufacturer may take other action, short of a formal recall, that satisfies ODI investigators (see app. II for a summary of ODI's investigative procedures).

One ODI official acknowledged that the decisions made in regard to the 25 cases cited by the Center were very difficult, but that the process depends on allowing engineers, managers, and legal staff to make the hard decisions on the basis of their professional experience, knowledge, and expertise. In each of the 25 safety defect investigations cited by the Center, NHTSA sent a voluntary recall request letter to the manufacturer and, after further information-gathering and investigation, later closed the investigation without a recall. According to ODI closing documents, 21 of the 25 investigations were closed because the alleged defect did not pose a safety risk significant enough to warrant further action. One was closed because NHTSA lost a federal court appeal, and the remaining three were closed because they were similar to the case NHTSA lost in federal appeals court (see app. I).

For example, four of the defects in question resulted in a safety failure early in the life of the vehicle. ODI officials said these types of defects will not have a significant safety impact because the manufacturer most likely will have repaired or replaced the defective part before a recall is necessary. Also, the manufacturer will have changed the design on later models to prevent future failures. In nine other investigations, manufacturers took corrective action, such as a partial recall or a service campaign which ODI deemed sufficient to minimize any safety risk. Three other investigations concerned defects that might cause a gradual equipment failure, with warning to the driver. ODI officials consider gradual equipment failure with some type of warning to be a mitigating factor when evaluating potential safety risk. Each of these investigations involved use of formal procedures, analysis, and professional judgment by NHTSA's engineers and attorneys that a recall was not warranted.

NHTSA and the Center Have Different Auto Safety Roles and Responsibilities

NHTSA and the Center play different roles in promoting auto safety. As a government agency, NHTSA is bound by its authorizing legislation, which directs it to find and remedy defects that pose an unreasonable risk to safety. The definition of "unreasonable risk," however, is left open, and the tension between NHTSA and the Center arises in part because of differences in the way each interprets this standard. The consumer-oriented Center is more inclined to consider the existence of any defect to be "unreasonable," while NHTSA takes into account such factors as the severity of safety hazards caused by the defect, and how much warning the driver receives before a significant safety failure occurs.

Judicial Review of Federal Nonenforcement Decisions

The Lemon Times article expresses the Center's support for legislation to permit judicial review of NHTSA decisions to deny petitions to open defect investigations, or to close investigations without recalls. The article discusses several high-profile investigations and lists the 25 that NHTSA closed without a recall to demonstrate the need for such legislation. The Senate bill cited, however (S. 673), referred only to judicial review of NHTSA decisions to deny petitions to open defect investigations. Currently, NHTSA's governing statutes would have to be changed to permit either type of review.

NHTSA is almost completely exempt from review of its decisions to deny petitions to open defect investigations since a 1985 Supreme Court ruling that a federal agency's nonenforcement decisions are not reviewable by the courts unless an agency's statute provides for it (Heckler v. Chaney).² Heckler v. Chaney also found that the general presumption of unreviewability did not apply where (1) the agency's inaction was based on a conclusion by the agency that it did not have the statutory authority to deal with an issue, (2) the agency's policy was so extreme as to amount to an abdication of its statutory responsibilities, or (3) constitutional rights are being violated. The District of Columbia Circuit Court applied the principles set forth in Heckler v. Chaney when it specifically held in 1988 that nothing in NHTSA's governing statute or regulations allowed for judicial review of a NHTSA decision to deny a petition to open a safety defect investigation (Center for Auto Safety v. Dole).³ None of the three exceptions outlined in Heckler v. Chaney were found to be applicable in this case.

The Director of the Center for Auto Safety said he supports judicial review of NHTSA nonenforcement decisions using the "arbitrary and capricious" standard set out in Title 5 [5 U.S.C., sec. 706 (2)(a)]. To this end, the Center supported a judicial review provision included in S. 673 (National Highway Traffic Safety Administration Authorization Act of 1989), as approved by the Senate Committee on Commerce, Science and Transportation. The judicial review provision was removed from the bill on the Senate floor, and the bill as amended was passed by voice vote on August 3, 1989. The Center for Auto Safety seeks to have the provision reinstated in the House version.

²Heckler v. Chaney, 470 U.S. 821 (1985).

³Center for Auto Safety v. Dole, 846 F.2d 1532 (D.C. Cir. 1988).

The judicial review provision contained in S. 673, however, referred only to agency denials of petitions to open investigations, not to agency decisions to close an investigation without a recall. We found no court decisions discussing the right to judicial review of decisions to close investigations without a recall. The Director of the Center pointed to a 1970 suit brought by the Center in which the group had sued over just such an issue and obtained a preliminary injunction against NHTSA. The Director considers this suit precedent for allowing judicial review. Before the suit was decided, however, the manufacturer recalled the vehicles in question voluntarily. Therefore, the court did not reach a conclusion on this issue. We believe that the 1970 suit does not set a precedent for judicial review of NHTSA's decisions to close an investigation without a recall.

Department of Transportation officials oppose judicial review of NHTSA petition denials because they fear an onslaught of litigation over investigations they are not pursuing that will force them to divert resources—engineers and lawyers—away from the problems they do choose to investigate. The Director of the Center believes that the “arbitrary and capricious” standard is tough enough to prevent a large influx of court cases against NHTSA, and he said that previously, the Center sued NHTSA over a petition denial only once (the 1988 Center for Auto Safety v. Dole case). The Senate Committee report on S. 673 confirms that only one NHTSA petition denial has been challenged in court since the National Traffic and Motor Vehicle Safety Act of 1966 was amended in 1974 to provide for citizen petitions, among other changes. The Director of the Center told us that the real worth of a judicial review provision is that it forces NHTSA to consider possible public opposition when making decisions not to open certain safety defect investigations.

As it stands, the Congress would have to change the law to provide for judicial review of NHTSA's decisions to deny a petition to open a defect investigation, or to close an investigation without a recall. As noted above, agency nonenforcement decisions are not reviewable since Heckler v. Chaney unless set out in agency statute or regulation. The Senate has considered and rejected legislation providing for such reviews of NHTSA.

Impact of Center's Actions on NHTSA's Work

The controversy surrounding the September Lemon Times article and ODI employees' letter to the Center did not hinder ODI employees in their work. ODI officials continue to believe, however, that the Center's activities over the past few years have reduced public confidence in NHTSA, resulting in fewer calls to the agency to report potential safety defects and fewer returns of ODI's vehicle owner questionnaires. We found that certain indicators ODI officials use to measure public confidence in NHTSA have been decreasing recently, but there is no clear evidence linking this drop to the Center's activities.

Federal government employees are subject to review and criticism of their work by the public, and ODI employees are often criticized by the Center and other groups. When we spoke with ODI employees, we found that while some employees were angry about what they believed were distortions of their work, most said they recognize the legitimate role the Center plays as consumer advocate. Also, there was a consensus among the employees that the particular September 1989 Lemon Times article was no worse than previous or subsequent criticism from the Center.

We found no evidence that publication of the article hindered ODI employees from performing their work. On the contrary, several told us that they were motivated to work even harder. One member of the complaint-screening staff said that he "took it as a challenge," and another said that she responded by taking more time with public callers so that they would have a good impression of the agency. The incident seemed to improve office morale, and the employees generally believed the resultant publicity was good for NHTSA because it raised public awareness of the agency's existence and mission.

In their September letter to the Center, 50 ODI employees alleged that their work has been hindered by a loss of public confidence in the agency. ODI officials fear that if the public loses confidence in NHTSA, fewer people will report potential safety defects. Several ODI employees stressed the fact that their work depends on reports of safety defects from the public for early clues to potential auto safety problems, via their Auto Safety Hotline and Vehicle Owner Questionnaires. To support their case that the Center's activities in recent years, including the September article, have had a negative effect on public confidence in NHTSA, ODI officials gave us statistics on the number of calls to the Auto Safety

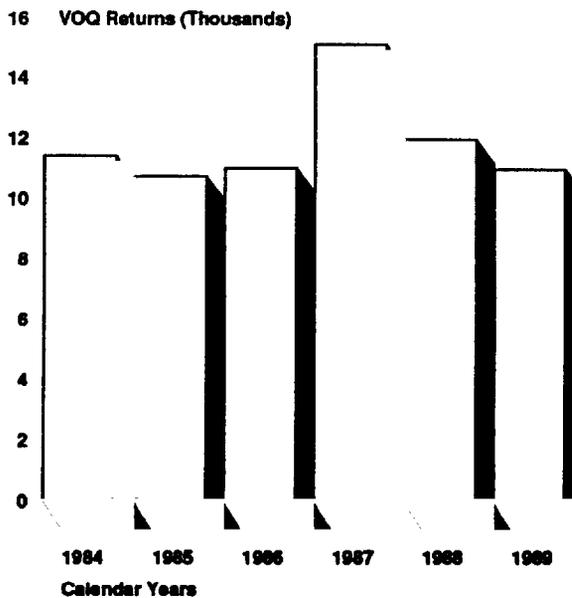
Hotline and the number of Vehicle Owner Questionnaires returned.⁴ ODI officials use these numbers as indicators of public willingness to contact NHTSA about auto safety problems.

We analyzed ODI's numbers and found that questionnaire returns are down substantially since 1987. It should be noted, however, that in 1987, questionnaire returns were much higher than in any other year from 1984 to 1989 (see fig. 1). ODI officials suggested that several high-profile defect investigations in 1987 may have caused the high return rate, but they could not pinpoint any specific reason for the increase. ODI officials continue to be concerned by the numbers for the first 6 months of 1990, which are lower than those for the same months in 1989.⁵ We found no clear evidence linking the fluctuations in questionnaire returns to the Center's activities.

⁴NHTSA sends out a questionnaire to every person who calls with a complaint about a safety defect or an information request on a recall effort. The questionnaire asks for specific information about the complainant's allegedly defective vehicle, for use in safety defect investigations.

⁵In response to what they see as a sharp decrease in questionnaire returns, ODI officials have begun soliciting returns over the phone ("electronic" returns). Electronic returns have been received in the months of April, May, and June 1990. We did not include these electronic returns in our analysis. If we had included them, the number of questionnaire returns would have been slightly higher in these 3 months than in the same months in 1989.

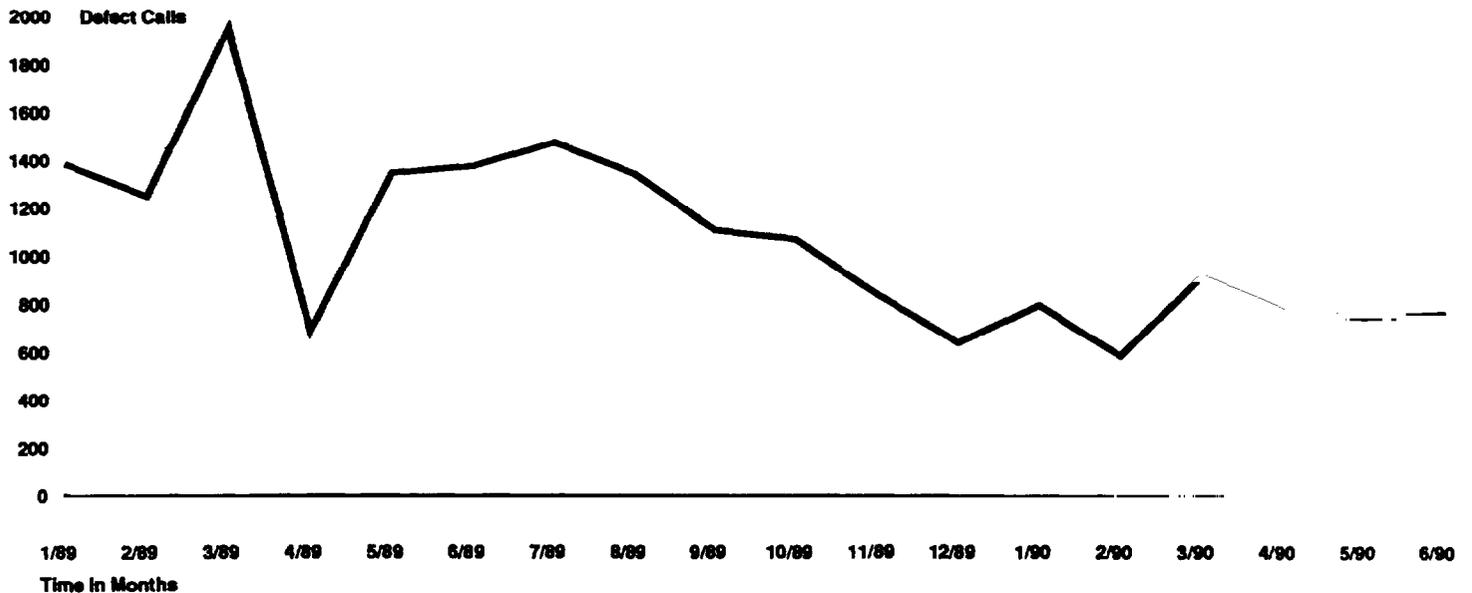
Figure 1: Vehicle Owner Questionnaire Returns, 1984-89



Source: ODI data.

ODI officials also were concerned that while Hotline calls were up substantially in 1989, those calls relating to safety defects were down. We found that Hotline calls did rise substantially in 1989, most likely because of a controversy over child safety seats in December, during which ODI received substantially more hotline calls than in previous months. Because ODI employees do not send a vehicle owner questionnaire in response to every call, it is difficult to make a direct comparison between the increased number of calls and the number of questionnaire returns. Even without reference to total Hotline calls, however, it appears that calls on safety defects are dropping (see fig. 2). Since these calls are often ODI's first tip on potential safety problems, any sustained decrease is cause for concern among ODI officials. Again, we found no clear link between the Center's actions and the drop in defect calls.

Figure 2: Number of Calls to NHTSA's Auto Safety Hotline Reporting Potential Safety Defects, Jan. 1989-June 1990



Source: ODI data.

Center's Use of NHTSA Information

The Center's sale of information available from NHTSA is not illegal. If a third party is willing to pay the Center for information that one can get free from NHTSA, there is no legal prohibition on the Center's selling it to the third party.

The Center receives information from NHTSA by (1) reviewing the public files kept in NHTSA's Technical Reference Library and noting or copying the needed information and (2) filing a Freedom of Information Act (FOIA) request with NHTSA's Executive Secretariat. Although fees are associated with obtaining information by FOIA request, the Department of Transportation waives all fees that total less than \$10.

While the Director of the Center said that the group often pays FOIA fees, NHTSA officials told us that in most cases, the Center also gets a waiver for costs in excess of \$10 under a section of the Department of Transportation's FOIA regulations which states that fees may be waived if disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester" (49 C.F.R. Subtitle A, section 7.97 (e)). The

Center does pay for a yearly computer search and downloading of ODI's complaint database, including names and addresses of complainants.⁶

The Center does not seem to be treated differently from other nonprofit or public interest groups that request NHTSA information, although it is the most frequent requester of information from the Office of Defect Investigation. ODI officials estimated that 90 percent of the time that employees spend answering public inquiries is devoted to the Center. ODI officials also noted that the type of inquiry the Center makes generally requires the time of technical staff, not Hotline or other information-processing employees.

In regard to FOIA requests, the Center is by far the largest public interest group requesting this type of information, making it difficult to compare its treatment with that of similar groups. ODI officials told us that, since the Center requests FOIA information in its complaint data base so frequently, the information is sometimes released to it without going through the formal FOIA process. It should be noted, however, that auto manufacturers also are granted this informal waiver. No other group requests information as frequently as the Center and the manufacturers.

The Director of the Center says that the group does not charge the general public for consumer packages on auto safety defects and recalls compiled from information obtained free from NHTSA. The Center asks that information requests be in writing and that the requester include a self-addressed envelope with 45 cents postage. According to the Director, the Center sends out about 60,000 information packages every year. The packages include referrals to NHTSA's technical reference division (which charges a fee for searches on specific defects and recalls) and the Auto Safety Hotline if additional information is needed.

Information sold to reporters, attorneys, and others from ODI's complaint data base costs the Center \$80 per search after the initial, annual downloading. The Director of the Center says that those who request this information are charged the search fee plus a postage and handling fee of \$20. He claims the Center takes a loss much of the time even with this fee schedule and, in some instances (e.g., to public interest research groups), provides the information free.

⁶The Center files a FOIA each year to obtain the names, addresses, and specific complaints of those people who have contacted NHTSA in the preceding year. The Center hires a contractor to go through NHTSA's files and compile this information into a computer data base. FOIA charges and contractor fees total about \$2,000. Subsequent searches of that data base cost the Center \$80 each.

Scope and Methodology

To determine the reasons for the conflict over the 25 safety defect investigations cited by the Center, we met with NHTSA and ODI officials and the Director of the Center. We reviewed and analyzed the closing documents for the 25 investigations and the recall request letters for 20 of the 25.⁷ Also, we interviewed three panels of ODI employees, including (1) seven employees from the complaint-screening staff, (2) four employees from the engineering analysis staff, and (3) seven senior ODI officials (one of the officials was also a member of the complaint-screening staff panel). These interviews helped us determine how ODI's work had been affected by the controversy. In addition, we analyzed Auto Safety Hotline calls received by ODI from January 1984 through June 1990, and the number of Vehicle Owner Questionnaires returned between January 1984 and June 1990 to determine if the Center's activities had hindered ODI's work by undermining public confidence in NHTSA. We reviewed Department of Transportation FOIA regulations and spoke to NHTSA officials responsible for the disposition of FOIA and other information requests to determine how the Center compared with other public interest groups in requesting information from NHTSA. Finally, we examined legal matters principally relating to judicial review, but also encompassing the legality of the Center's sale of NHTSA information. It was not within the scope of our review to determine whether NHTSA's decisions in regard to the 25 safety defect investigations were correct.

We discussed the information in this report with NHTSA officials and the Director of the Center, who agreed with the facts presented. As requested, however, we did not obtain official agency comments on a draft of this report. Our work was conducted primarily between December 1989 and June 1990 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will provide copies to the Secretary of Transportation, the Administrator of NHTSA, the Director of the

⁷NHTSA officials were unable to provide recall request letters for five of the investigations but stated that the letters were sent.

Center for Auto Safety, and any other interested parties. If you have any questions about this report, please contact me at (202) 275-1000. Major contributors to this report are listed in appendix III.

Sincerely yours,



Kenneth M. Mead
Director, Transportation Issues

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Abbreviations

DOT	Department of Transportation
EA	engineering analysis
FOIA	Freedom of Information Act
GAO	General Accounting Office
NHTSA	National Highway Traffic Safety Administration
ODI	Office of Defect Investigation
PE	preliminary evaluation
VOQ	Vehicle Owner Questionnaire

Details on the 25 Investigations Cited by the Center

File order	Defect office action number ^a	Affected vehicles	Alleged defect
1	EA78-118 C85-10	1975-84 Ford trucks & vans	Loose or missing stud nuts & broken wheel studs; can result in a set of dual rear wheels falling off
2	EA79-057	1975-78 Cadillacs	Headlight adjustor failures; headlight drops down or to the side when plastic adjusting nut breaks; some visibility problems; no warning
3	EA79-079	1974-79 Ford vehicles	Loss of power steering/brake assist; increases force/time needed for steering/braking
4	EA80-009	1976-78 Chevetttes	Tire separates from rim, resulting in a flat or complete detachment; potential loss of vehicle control
5	EA80-085	1978-79 Cadillac Seviles	Broken wire wheel spokes cause flat or wheel separation; potential loss of vehicle control
6	EA80-024 C81-09	1980-85 GM X-Body vehicles	Rear brake lock-up; potential loss of control
7	EA80-112 C82-18	1979-80 Dodge and Plymouth Horizons	Failure of hatchback support; door falls without warning
8	EA81-015 C82-03	1978-80 Chevy Malibu, Monte Carlo & El Camino, Pontiac Lemans & Grand Prix, Olds. Cutlass & Cutlass Supreme, Buick Century & Regal, GMC Caballero	Rear axle separation
9	EA81-010 C82-19	1979-80 Mustang and Capri	Failure of hatchback support; door falls without warning
10	E82-028	1981-82 Ford Escort, EXP & Mercury Lynx, LN7	Engine compartment fires
11	EA83-014	1978-82 Chrysler vehicles with 1.7L and 2.2L engine	Carburetor isolator failure; results in stalling engine
12	EA80-100 C84-01	1980 GM X-Body vehicles	Loss of power brake assist; increased force/distance needed for braking
13	EA83-013	1981-82 Ford vehicles	Front seatback failure
14	E80-087 C84-005	1979-80 Ford Mustang & Mercury Capri	Rear brake lock-up; potential loss of control
15	EA84-019	1982 Chevy Camaro and Pontiac Firebird	Failure of rear seatbelt anchorage
16	EA84-028	1981-82 diesel Chevy Chevetttes	Rear brake lock-up; potential loss of control

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Details on the 25 Investigations Cited by
the Center**

Date defect office opened action^b	Date recall request issued^b	Date defect office closed action^b	Reason/s defect office closed action
09/14/78	10/31/84	08/02/88	1. No difference seen between this vehicle and total vehicle population—no unreasonable risk 2. Complaints down 3. New design
03/18/79	02/06/80	10/27/81	1. No unreasonable risk—unlikely that two headlight adjusters will fail at once 2. New design
05/18/79	04/03/80	04/21/82	1. Problem occurs early in life of vehicle—little likelihood of future incidents 2. New design on later models 3. Complaints down
11/12/79	04/17/80	02/03/82	1. Slow loss of air, providing warning to driver 2. Identifiable problem only in 1976 model, corrected
05/22/80	05/11/81	11/04/83	1. Sufficient driver warning 2. Tire air loss usually gradual, vehicle control maintained 3. Complaints down
11/26/79	07/06/81	05/18/89	GM 1980 X-Car case, which DOT lost in federal appeals court
09/02/80	11/20/81	05/30/85	1. No unreasonable risk 2. Complaints down 3. New design
04/07/81	12/02/81	11/26/84	1. Safety recall was conducted on 3 million vehicles produced at one plant 2. No defect found on vehicles produced at other plants
06/23/81	06/01/82	01/03/85	1. Ford took steps to correct problem 2. Complaints down 3. No unreasonable risk
05/27/82	03/28/83	07/26/84	1. No specific defect found 2. No unreasonable risk 3. Symptom occurs early in life of vehicle—little likelihood of future incidents
04/26/83	05/12/83	12/11/86	1. No unreasonable risk 2. New design
07/24/80	08/12/83	10/11/88	1. Complaints down 2. GM conducted an intensive information campaign on servicing these vehicles 3. No unreasonable risk
01/12/83	11/01/83	01/26/89	1. Ford conducted a recall that addressed the specific problem 2. No unreasonable risk on rest of vehicle
05/27/80	11/03/83	05/18/89	Similar to 1980 GM X-body case, which DOT lost in federal appeals court
05/30/84	06/19/84 11/16/84	05/01/85	1. Complaints down 2. Passes dynamic test 3. No unreasonable risk
08/28/84	10/09/84	09/20/88	1. Complaints down 2. Similar to 1980 X-Body case, which DOT lost in federal appeals court

(continued)

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Details on the 25 Investigations Cited by
the Center

File order	Defect office action number	Affected vehicles	Alleged defect
17	EA84-023 C85-07	1982-85 GM A-Body vehicles	Rear brake lock-up; potential loss of control
18	EA84-006	Certain GM A-Body vehicles	Upper control arm mounting failure; possible steering control problems
19	PE85-047 EA86-003	1982-85 Cadillac Eldorado	Door fires
20	EA82-040	1979-81 Honda Accord & Civic	Seatbelt retractor failures
21	EA86-002	1982-83 Toyota Celica	Malfunction of front seatbelts
22	EA83-020 EA85-045	Certain 1981-84 Toyota Cressidas	Sudden acceleration
23	PE86-051 EA86-025	1985 GM A,C,G,F and N-Body vehicles	Windshield wiper failure
24	EA85-041	1985 GM A,C,X-Body vehicles	Failure of linear seatback recliners; potential loss of control
25	EA85-018	1976-86 Chevy Chevette, 1981-86 Pontiac T-1000	Crankshaft pulley bolt failure; potential loss of power steering assist, engine overheating/stalling

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the Center**

Date defect office opened action^b	Date recall request issued^b	Date defect office closed action^b	Reason/s defect office closed action
12/13/83	01/03/85	04/18/89	Similar to 1980 X-Body case, which DOT lost in federal appeals court
11/23/83	01/16/85 03/25/85	12/08/85	1. No unreasonable risk 2. Problem occurs early in life of vehicle—little likelihood of future incidents
01/28/85	09/04/85	02/18/88	1. GM instituted a safety recall for defective part or cars with a high fail rate 2. No injuries/deaths reported
07/20/82	11/04/85	05/12/86	1. Honda took corrective action 2. No unreasonable risk
10/18/85	12/05/85	05/08/86	1. Toyota conducted service recall 2. No unreasonable risk
09/20/83	05/06/86	02/18/88	1. Toyota conducted recall to replace potentially defective part 2. Besides above part, no other defect found 3. Complaints down
04/28/86	09/05/86	03/02/88	1. GM issued six service bulletins on repair, which seemed effective 2. No unreasonable risk 3. Problem occurs early in life of vehicle—little likelihood of future incidents 4. New design on later models
08/19/85	09/03/86	11/12/87	1. No unreasonable risk—seatback movement is gradual 2. New design
03/13/85	05/09/86	09/04/87	1. No unreasonable risk 2. Manufacturer service campaign initiated 3. New design

^aThe defect office action numbers in this appendix may differ somewhat from ODI source documents because the same investigation sometimes was referred to differently in various ODI sources. For example, an investigation might appear as E82-05 in one source, and EA82-005 in another. The numbers do follow a consistent format, however, with a letter(s) to identify the level of investigation (preliminary evaluation, engineering analysis, or formal case), a 2-digit number identifying the year in which the investigation was opened, and a 2- or 3-digit number giving the chronological order within that year.

^bThe dates in this appendix have been compiled from several sources. ODI officials confirmed these dates, but in some cases, we were not able to document them independently. The dates are not a matter of dispute between NHTSA and the Center, however, and do not affect the content of this report.

Office of Defect Investigation's Procedures for Conducting Safety Defect Investigations

Office of Defect Investigation (ODI) officials outlined their investigative process, which consists of three main steps, as detailed below:

Preliminary Evaluation

Most of ODI's work comes from consumer complaints via the Auto Safety Hotline, but the agency also gains information on potential safety defects from letters and from monitoring manufacturer service bulletins (manufacturers are required to send the National Highway Traffic Safety Administration (NHTSA) a copy of any service bulletins they send out to their dealers, even if the bulletin is not related to safety). ODI staff screen the information for patterns and trends that would indicate a potential safety defect. If they see such a pattern, a preliminary evaluation (PE) is opened. When a PE is opened, ODI sends a letter to the manufacturer requesting information on any complaint received on the particular problem noted. Manufacturers are required by law to provide this information (The National Traffic and Motor Vehicle Safety Act of 1966 requires manufacturers to notify NHTSA of any potential safety defects, not only those about which NHTSA sends an information request). NHTSA generally requests that the information be returned within 6 weeks, but the agency has no power to enforce this time limit.

The PE is designed as an information-gathering process. When the manufacturer responds, ODI staff analyze the information and determine whether there is a potential safety problem or whether the manufacturer has satisfactorily addressed its concerns. If the manufacturer's response is adequate, a PE closing document is prepared (this is a public document). If ODI staff believe the problem warrants further investigation, the case is upgraded to an "engineering analysis" (EA). The PE phase of a safety defect case usually takes about 4 months. ODI staff told us that about one-third of all PE cases go on to the engineering analysis phase.

Engineering Analysis

The same investigator who handled the case as a PE is in charge of the EA. In this phase, a more lengthy information request is sent to the manufacturer. This request asks for information on any lawsuits pending against the manufacturer relating to the potential defect being investigated, its own engineers' testing results, sales figures for replacement parts, subsequent design changes, and the manufacturer's own appraisal of the potential safety consequences. ODI may also do its own tests at this point to determine whether the defect does have an adverse effect on safety. The tests may be done in-house at NHTSA's lab in Ohio (which

requires only an internal memorandum) or may be contracted out (which requires a formal procurement contract).

ODI may have several rounds of correspondence with the manufacturer to clarify specific points in the EA phase. Although it is possible that NHTSA will bring something to the manufacturer's attention of which it was unaware, generally, the manufacturer has much more information on a potential safety defect than NHTSA. ODI staff gather the relevant information to determine if a serious problem exists. This task is complicated by the fact that the quality and type of information available vary among manufacturers. For example, some companies may have information on warranties readily available but no information on replacement-part sales.

Manufacturers will acknowledge that a defect exists much of the time, but will often claim it does not adversely affect safety. Also, manufacturers will argue with ODI over the severity and frequency of the defect. ODI staff set up their own criteria, on the basis of the warranty, sales, and internal testing information, to determine if the defect is severe enough to pose a safety threat. If there is such a threat, ODI issues a recall request letter asking the manufacturer to recall the model for repair. A recall request letter is not an order, but a request for voluntary recall. In the past, NHTSA did not get a very good response to its recall request letters. Now, however, manufacturers act on recall request letters much more often and voluntarily recall models containing safety defects. If they do not, however, NHTSA must decide whether to bring the defect investigation up to the next level—a formal defect case.

At this point, it is still possible for manufacturers to provide NHTSA with new or updated information that can change the status of a case. Manufacturers are continually testing and surveying their dealers during the investigation process, and they have far greater resources at their disposal than NHTSA. They may come up with new or more detailed information that convinces ODI either that the defect in question is not a safety hazard, or that it has been properly taken care of by the company (e.g., if the manufacturer has isolated and corrected the problem and performed a limited recall). If this happens, the case will be closed and a close-out memo will be prepared for the public file (not all portions are public—any internal engineering opinions are deleted from the public file, as well as any confidential business information). If the manufacturer does not provide a satisfactory reason for refusing to recall defective cars voluntarily, NHTSA has the option of opening a formal case

Formal Case

If NHTSA decides that a recall request has been refused without a good reason, it will convene a defect review panel consisting of representatives from ODI, Office of the Chief Counsel, and the Office of the Administrator. NHTSA attempts to reach a consensus on the severity of the safety problem at hand and the strength of NHTSA's case if the agency were to press the issue in federal court. ODI officials also consult with the legal officials informally before the defect review panel convenes to get an idea of the strength of any potential court case. In the interest of agency credibility, NHTSA is trying to send recall request letters only if it believes that they have a strong enough case to press the issue in court if necessary. NHTSA cannot force a manufacturer to recall vehicles except by court order on a case brought by the government. A formal case is the final stage of the safety defect investigation process, with the ultimate decision on recall resting with the federal courts.

Major Contributors to This Report

Resources,
Community, and
Economic
Development Division,
Washington, D.C.

John W. Hill, Associate Director
Ron E. Wood, Assistant Director
J. Erin Bozik, Assignment Manager
Cheryl A. Donahue, Evaluator-in-Charge
Curtis L. Groves, Senior Operations Research Specialist

Office of the General
Counsel, Washington,
D.C.

Martin J. Fitzgerald, Special Assistant to the General Counsel
David K. Hooper, Attorney

Related GAO Products

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